

METROPOLITAN EXPOSITION-RECREATION COMMISSION

RESOLUTION NO. 33

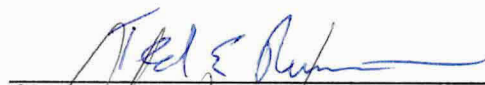
Authorizing the Chairman and Secretary/Treasurer to execute an Automated Teller Machine Installation Agreement, identified as Exhibit A attached, with the First Interstate Bank of Oregon, N.A. (First), for placement of an automated teller machine at the Oregon Convention Center.

The Metropolitan Exposition-Recreation Commission finds:

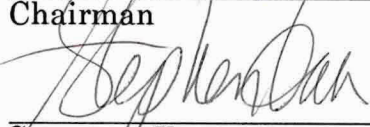
1. That on February 27, 1989, Metro released a Request for Proposals for placement of automated teller machines at the Oregon Convention Center.
2. That the teller machines will be installed adjacent to the ticket booths at the Convention Center, and will face the plaza and be accessible from the outside only.
3. That by March 28, 1989, the deadline, four proposals were received.
4. That the selection committee, composed of Jeff Blosser of MERC staff, Lloyd Anderson of the Advisory Committee on Design and Construction, and Sandy Bradley of the project staff reviewed the proposals.
5. That First Interstate Bank was chosen as one of two financial institutions to provide the teller machines.

BE IT THEREFORE RESOLVED that the Chairman and Secretary/Treasurer are hereby authorized on behalf of the Metropolitan Exposition-Recreation Commission to execute the Automated Teller Machine Installation Agreement with First Interstate Bank, attached.

Passed by the Commission on August 9, 1989.



Chairman



Secretary/Treasurer

APPROVED AS TO FORM:


Metro General Counsel

AGREEMENT

THIS AGREEMENT, dated this _____ day of August, 1989, is between the Metro Exposition-Recreation Commission, hereinafter referred to as "MERC," whose address is 2000 S.W. First Avenue, Portland, Oregon 97201-5398, and First Interstate Bank of Oregon, N.A., hereinafter referred to as "Bank," whose address is P.O. Box 3131, Portland, Oregon 97208 (together "the parties").

WITNESSETH:

WHEREAS, MERC desires to provide space for the installation of an automated teller machine ("ATM") in the Oregon Convention Center for the benefit of its customers; and

WHEREAS, Bank has developed an extensive package including hardware, software, and is a participant in electronic funds transfer ("EFT") systems; and

WHEREAS, Bank intends to supply an ATM which consists of a computer terminal through which a financial transaction can be initiated and to permit use of such ATMs by cardholders of any EFT system in which Bank may be a participant; and

WHEREAS, the MERC manages the Oregon Convention Center; and

WHEREAS, Bank desires to install, operate and maintain an ATM in a space located in the Oregon Convention Center as shown in the attached Exhibit A; and

WHEREAS, the MERC desires to make space available to Bank in the Oregon Convention Center for the installation, operation, and maintenance of ATM, and

WHEREAS, the parties shall be mutually benefitted by the installation of an ATM at the Oregon Convention Center;

NOW, THEREFORE, the parties hereby agree the Bank is granted the right to install, operate and maintain ATM in the location occupied by the Oregon Convention Center specified herein on the terms and conditions specified herein.

SECTION 1. TERM

1.1 Original Term - Subject to earlier termination as provided in this Agreement, the term of this Agreement shall be from the date following installation and at which time the ATM becomes operational and continue through October, 1995. It is anticipated that the ATM will become operational in September, 1990.

1.2 Renewal Option - If this Agreement is not then in default, MERC shall have the option to renew this Agreement for one term of five (5) years as follows:

(a) the renewal term shall commence on the day following the date of termination of the preceding term;

(b) with the exception of the fee which shall be renegotiated prior to the expiration of the Agreement, the terms and conditions of the Agreement shall be renewed automatically unless MERC or Bank delivers written notice to the other party terminating Agreement. Such notice shall be given not less than ninety (90) days prior to the last day of the expiring term.

1.3 Fee - The fee for said term shall be three hundred dollars (\$300) per month which Bank agrees to pay to MERC in advance on the fifteenth day of each and every month of said term, commencing November 15, 1990, or upon the date on which the ATM becomes operational, whichever occurs first. The fee for the partial month (if any) in which the Agreement commences, shall be prorated and paid at commencement of the term.

SECTION 2 INSTALLATION AND OWNERSHIP

2.1 Bank shall be responsible for all costs of installation and hookup of the ATM in the Oregon Convention Center and as mutually agreed upon by the parties. ATM shall be located adjacent to the Holladay Avenue ticket booth as shown on the attached Exhibit A.

2.2 MERC shall be responsible for site preparation including installation of the electrical power line to the ATM, installation of the conduit for the power line and the communications line, and installing Bank supplied telephone cable.

2.3 Bank shall be responsible for all other work required to install and connect the ATM, including but not limited to obtaining and installing the ATM and the communications line to which the ATM shall be connected and making such connection.

2.4 Installation work shall be done at times agreed upon by the parties, which shall facilitate the prompt installation of the ATM. Bank agrees to promptly restore MERC property damaged by Bank's employees during installation of the ATM. Bank further agrees that it shall not permit any mechanics, materialmen's or other liens to stand against MERC for work or materials the responsibility for which is assigned to Bank under the terms of this Agreement.

2.5 Bank shall retain ownership of the ATM and to all of the components and software necessary to constitute the ATM program, both as it now exists and as it may hereafter be modified. As between MERC and Bank, the ATM is not to become a fixture and Bank may remove it from the location upon expiration, cancellation, or

termination of this Agreement, during normal business operations of MERC, at a time acceptable to MERC.

SECTION 3. OPERATION, MAINTENANCE AND REPAIR

3.1 Bank shall be responsible for the servicing of the ATM.

3.2 MERC shall be responsible for the cost and provision of sufficient electrical power to operate the ATM.

3.3 MERC shall notify Bank of any malfunction or damage to the ATM or related equipment immediately upon discovery thereof and shall make all reasonable efforts to prevent vandalism of the ATM. Bank shall be responsible for all maintenance of the ATM. MERC shall allow Bank, Bank's agents, authorized employees or other maintenance or service personnel access to Bank's ATM at all reasonable times for repair and maintenance and to areas from which Bank's ATM can be repaired and maintained. Bank's employees and agents shall carry identification while on the Oregon Convention Center premises and shall present such identification upon request by the MERC personnel. Bank shall provide MERC with a list of all emergency telephone numbers and contacts. MERC shall provide the names and telephone numbers of personnel who can be contacted or notified after business hours.

3.4 MERC shall notify Bank at least five (5) business days before relocating or intentionally interrupting power or alarm connections to the ATM.

3.5 Bank shall be responsible for all telecommunication expenses resulting from operation of the ATM, including payment of any line fee or charge which may be imposed.

3.6 Bank or its designated agent shall be responsible for complete maintenance and service of the ATM, including:

(a) regularly scheduled and unscheduled emergency equipment diagnosis, servicing, repair and maintenance, including replacement parts;

(b) maintenance of communication lines and communications links to Bank's computer and to any applicable EFT system;

(c) clearing and settlement of transactions;

(d) integration with Bank's ATM alarm system; and

(e) providing cash, receipts, ribbons and other supplies as required.

3.7 Bank will use its best efforts to ensure that the ATM is operational and available for use at all times. Unless functions are eliminated due to conditions described under force majeure, the ATM is operational when it is capable of performing

(a) for Bank's customers the following transactions: (i) cash withdrawals from checking, savings and money market accounts, (ii) cash advances from credit card accounts, (iii) transfers between checking, savings, money market and credit accounts, and

(iv) balance inquiries on checking, savings, money market and credit accounts; and,

(b) for customers of other banks belonging to an EFT system to which the Bank is a participant, the functions allowed by those banks.

Bank will use its best efforts to ensure that the ATM shall be capable of performing the functions described in clauses (a) (i) through (iii) and (b) of this section.

SECTION 4. PROPERTY INSURANCE

4.1 MERC and Bank shall each bear their own expenses of any insurance insuring their individual property.

4.2 Neither party shall be liable to the other (or to the other's successors or assigns) for any loss or damage caused by fire or any of the risks enumerated in a standard fire insurance policy with extended coverage endorsement, and in the event of insured loss, neither party's insurance company shall have a subrogated claim against the other.

SECTION 5. ADVERTISING

5.1 Bank shall provide and install a sign or signs on or above the ATM that identifies it. Appearance must conform with signage requirements of the Oregon Convention Center and be approved by the General Manager of the Oregon Convention Center in writing, prior to installation.

5.2 Bank shall have reasonable access to the ATM for demonstrating the ATM to customers.

5.3 The MERC is granted the right to approve or reject use of its name and logo in Bank's advertisements and promotions, the design of the exterior signs, and the sales material to be placed on the ATM. Bank is granted the right to approve or reject the use, in MERC advertisements and promotions, of the names and logos of Bank and any electronic fund transfer system in which Bank may, from time to time, participate. Approval under this subsection must be obtained prior to use or implementation and shall not be unreasonably withheld.

SECTION 6. DEFAULT

6.1 If the ATM becomes inaccessible to cardholders for fourteen (14) or more consecutive calendar days due to any cause whatsoever, including labor disputes, but not including causes within the sole control of Bank and causes referred to under force majeure, then Bank may declare the MERC in default with respect to such ATM and remove the ATM.

6.2 An event of default shall occur if either Bank or MERC fails to comply with any term or condition or fulfill any obligation of the Agreement within thirty (30) calendar days after written notice by the party asserting the default to the defaulting party specifying the nature of the default with reasonable particularity. If the default is of such a nature that it cannot be completely remedied within the thirty-day (30) period, this provision shall be complied with if the defaulting party begins correction of the default within the thirty-day (30) period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable.

6.3 Remedies on default: In the event of a default, this Agreement may be terminated at the option of the non-defaulting party by notice in writing to the defaulting party. If this Agreement is terminated, the defaulting party's liability to the non-defaulting party for damages shall survive such termination. The foregoing remedies shall be in addition to and shall not exclude any other remedy available to the non-defaulting party under applicable law.

6.4 In the event of default by either party, damage shall be limited to the cost of removing the ATM, which costs shall be the responsibility of the party in default.

SECTION 7. FORCE MAJEURE

The parties shall be excused from the performance of any obligation imposed herein for any period and to the extent that a party is prevented from performing such obligations, in whole or in part, as a result of delays caused by the other party or third parties, an act of God, war, civil disturbance, court order, or other cause beyond its reasonable control, including failures or fluctuations in electrical power, heat, light, air-conditioning, or telecommunications equipment, and such non-performance shall not be a default hereunder or a ground for termination thereof.

SECTION 8. CONFIDENTIALITY

The MERC shall not disclose the customer transaction or usage volumes of the ATM.

SECTION 9. ASSIGNMENT

Neither party may assign its rights under this Agreement without the prior written notification of the other party. In the event of an assignment, the assigning party shall remain liable for the performance of all covenants imposed on such party in this Agreement and the assignee shall be subject to all the terms and conditions of this Agreement. Consent to an assignment shall not be unreasonably withheld.

SECTION 10. RIGHTS OF THIRD PARTIES

By entering into this Agreement the parties hereto do not intend to benefit or confer any right upon any individual or entity not a party hereto. In no event shall anyone other than the parties hereto be entitled to enforce any of the terms of this Agreement.

SECTION 11. RELATIONSHIP OF THE PARTIES

It is not the intention or purpose of this Agreement to create any type of partnership relation or joint venture. It is understood and acknowledged that Bank is operating as an independent contractor.

SECTION 12. EMINENT DOMAIN: DAMAGE AND DESTRUCTION

12.1 If a portion of the premises is condemned or access to the ATM is restricted by condemnation or the threat thereof, then MERC and Bank shall agree upon a new location at the Oregon Convention Center for the ATM. If MERC and Bank cannot agree upon acceptable relocation premises, Bank may cancel this Agreement upon ten (10) days written notice to the MERC.

12.2 If all the buildings at the Oregon Convention Center are condemned, this Agreement shall terminate effective as of the date the title vests in the condemning authorities. MERC shall be entitled to all of the proceeds of condemnation other than proceeds attributable to the ATM. Bank shall be entitled to remove the ATM from the premises at its own expense, but shall have no obligation to restore the premises to their original condition.

12.3 If all or any part of the premises, the building in which the premises are located, or the ATM is damaged or destroyed by fire or other casualty, Bank may elect to cancel this Agreement effective as of the date of the damage.

SECTION 13. LIABILITY

13.1 The MERC, to the extent allowable by law, shall hold harmless, defend and indemnify Bank, its agents, employees, successors and assigns against all claims, demands, actions and suits, including attorneys' fees and costs, brought against Bank arising from MERC's negligent performance under this Agreement. MERC's obligation to Bank hereunder shall be circumscribed by the limitations and exclusions contained in the Oregon Tort Claims Act, ORS 30.260 et seq.

13.2 Bank agrees to indemnify and hold MERC, its agents and employees, harmless from any and all claims, demands, damages, actions, losses and expenses, including attorney's fees, arising out of or in any way connected with its performance of this Agreement, unless such liability, claim, damage or loss is caused by MERC's intentional misconduct or Bank's negligence, gross negligence or intentional misconduct. Bank shall obtain and maintain a policy of comprehensive general liability insurance with limits of not less than \$1,000,000 per occurrence which insures MERC against any loss or liability arising from or relating to the presence or operation of the ATM on the premises of the Oregon Convention Center. The policy shall be primary and shall name MERC as an additional insured.

A certificate evidencing the above insurance shall be provided by Bank to MERC sixty (60) days prior to installation. Renewal notices shall be sent to Metro upon issuance.

All insurance certificates shall provide for thirty (30) days written notice to Metro of cancellation, non-renewal or reduction of coverage.

13.3 Notwithstanding any statement contained in Section 13.2 to the contrary, Bank shall have the option to provide MERC with evidence of self insurance which demonstrates Bank's ability to cover losses of \$1,000,000 for injury to or death of one or more persons in any one accident or occurrence and in an amount of at least \$1,000,000 for property damage liability.

SECTION 14. NOTICES

Notices permitted or required by this Agreement shall be in writing, sent by certified mail or registered mail, addressed to:

Metro Exposition/Recreation Commission:

Metro Exposition/Recreation Commission
Attention: Jeff Blosser
2000 S.W. First Avenue
Portland, Oregon 97201-5398
until September 1, 1990, thereafter:

777 N.E. Martin Luther King Jr Blvd.
Portland, Oregon 97232

First Interstate Bank of Oregon:

First Interstate Bank of Oregon
Bank Properties Division T-14
Post Office Box 3131
Portland, Oregon 97208

Metro:

Metro
Daniel B. Cooper, General Counsel
2000 S.W. First Avenue
Portland, Oregon 97201-5398

Either party may change its address by providing notice of such as provided herein.

SECTION 15. INTERPRETATION

The law of the state of Oregon shall apply to the interpretation and enforcement of this Agreement.

SECTION 16. BINDING EFFECT

This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the respective parties hereto; provided however, that this Agreement and all rights hereunder may not be assigned except as specified herein.

SECTION 17. ATTORNEYS' FEES

If either party institutes any suit or action to enforce any covenant or agreement hereof, the prevailing party shall be entitled to recover such sum of money as the court may adjudge reasonable as attorneys' fees in such suit or action, including any appeals taken by either party in such suit or action.

SECTION 18. EXECUTION IN COUNTERPARTS

This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed to be an original and all of which when taken together shall constitute but one and the same instrument.

SECTION 19. WAIVER

No covenant, agreement or condition of this Agreement shall be deemed waived unless expressly waived in writing. The failure of either party to require strict performance by the other party of any covenant, agreement or condition shall not stop or otherwise affect such party's right to enforce the same, not be a waiver of such party's right to require strict performance in the future.

SECTION 20. ENTIRE AGREEMENT

This Agreement is the entire agreement between the parties and supersedes any written or oral negotiations or understandings, and any such negotiations or understandings are merged herein. Any modification or amendment of this Agreement must be in writing and signed by an authorized representative of both parties.

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the day and year first above written.

FIRST INTERSTATE BANK OF OREGON, N.A.

By: _____

Its: _____

By: _____

Its: _____

METROPOLITAN EXPOSITION-RECREATION COMMISSION

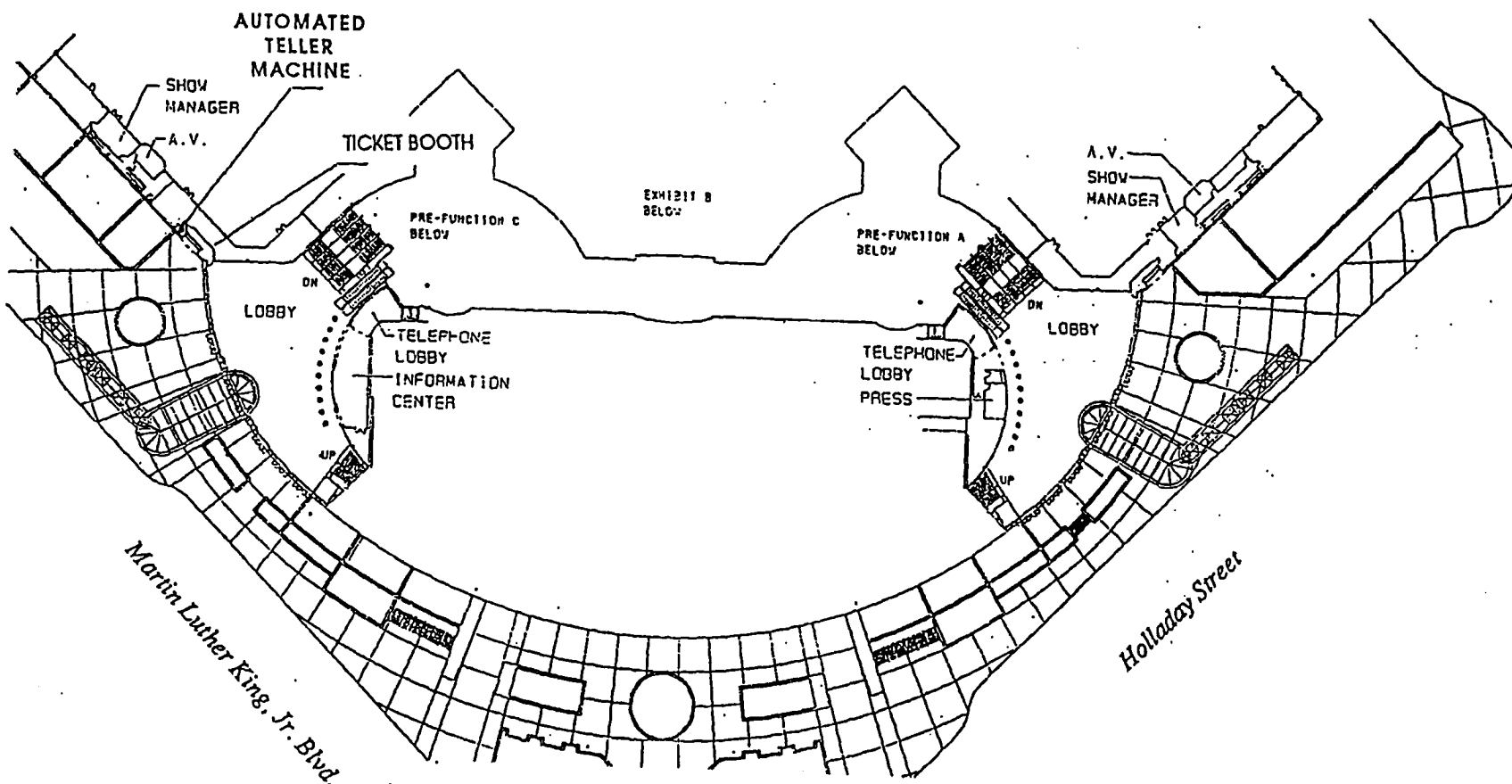
By: _____
Ted Runstein

Its: _____
Chairman

By: _____
Stephen L. Gale

Its: _____
Secretary/Treasurer

EXHIBIT A



OREGON CONVENTION CENTER
AUTOMATED TELLER MACHINE LOCATION
FIRST INTERSTATE BANK

(NOT TO SCALE)